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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ASAP COPY AND PRINT et al.,

Plaintiffs and Appellants,

v.

CANON SOLUTIONS AMERICA,
INC.,

Defendant and Respondent.

B262634

(Los Angeles County
Super. Ct. No. PC043358)

APPEAL from an order of the Superior Court of Los Angeles County,
Stephen Pfahler, Judge. Affirmed.

Nina Ringgold for Plaintiffs and Appellants ASAP Copy and Print and
Ali Tazhibi.

Dorsey & Whitney, Kent J. Schmidt and Lynnda A. McGlinn for
Defendant and Respondent Canon Solutions America, Inc.

ASAP Copy and Print and its proprietor, Ali Tazhibi (collectively, ASAP), appeal from an order of the superior court awarding respondent Canon Solutions America (CSA) attorney fees as costs incurred in connection with two appeals. We affirm the order.

FACTS AND PROCEDURAL HISTORY

In August 2002, ASAP acquired a photocopier from Canon Business Solutions, Inc. (CBS). The copier lease was financed by Canon Financial Services, Inc. (CFS). The lease agreement contained an assignment clause, a maintenance agreement, and a provision for an award of attorney fees to the prevailing party in the event of litigation. Approximately three years into the lease, CFS assigned its rights under the lease to General Electric Capital Corporation (GE). ASAP subsequently stopped making payments on the lease.

ASAP initiated this action in 2008. The action was dismissed at the pleading stage after the superior court sustained, without leave to amend, demurrers to ASAP's Fourth Amended Complaint and First Amended Cross-Complaint. The superior court entered a judgment in favor of CBS, CFS, and GE. The court also sanctioned ASAP's counsel, Nina Ringgold (Ringgold), and awarded the defendants attorney fees as prevailing parties.

A series of appeals by ASAP ensued. On June 4, 2012, in consolidated appeals, we affirmed both the judgment and the attorney fee awards, and awarded the respondents costs on appeal. (*ASAP Copy and Print et al. v. Canon Business Solutions, Inc. et al.* (Jun. 4, 2012, B224295 & B225702) [nonpub. opns.].) In subsequent appeals, we affirmed a number of prejudgment and postjudgment orders, including sanction orders against Ringgold (*ASAP Copy and Print et al. v. Canon Business Solutions et al.* (Mar. 4, 2014, B238144) [nonpub.opn.]) and attorney fee awards in favor of

CBS and CFS in connection with the appeal of the underlying judgment (*ASAP Copy and Print et al. v. Canon Business Solutions, Inc. et al.* (Jun. 23, 2014, B249588) [nonpub. opn.]).

This is ASAP's sixth appeal arising out of the photocopier lease case. The appeal is taken from a February 11, 2015 order granting the motion of respondent Canon Solutions America Inc. (CSA, the successor to CBS) as the prevailing party in appeal Nos. B238144 and B249588. The trial court awarded CSA \$10,000 in attorney fees and costs on appeal for case No. B238144 and \$15,000 for case No. B249588.

DISCUSSION

We first address issues raised by ASAP that are peripheral to the merits of the appeal.

A. Jurisdictional issues.

1. ASAP filed its notice of appeal in this case on February 23, 2015. On that same date, ASAP filed a petition to remove the case to federal court. The removal petition indicates that the “actions removed” are No. B261285 and an “unassigned appeal filed 2.21.15”—presumably the present appeal. On March 25, 2015, CSA filed a motion to remand the case. On May 4, 2015, the United States District Court granted the remand motion, noting that the case was “removed improvidently and without jurisdiction.”

ASAP first contends that this appeal should be stayed because “[t]he clerk of the district court did not transmit a certified remand order as to the appeal removed” ASAP is incorrect. A certified copy of the order granting the motion to remand accompanied the remand notice and was filed with this court on May 11, 2015.

ASAP also claims that this court lacks jurisdiction over this appeal because the remand notice lists only B261285 and not the “unassigned appeal

filed 2.21.15.” We construe the remand notice to encompass both of the matters ASAP removed to federal court (B261285 and the “unassigned appeal,” namely, this case), and assume that the deputy clerk of the U.S. District Court listed B261285 on the remand notice because it was the only appellate court case number provided on the removal petition.

2. Citing Code of Civil Procedure section 916,¹ ASAP next contends that the trial court did not have jurisdiction to consider CSA’s attorney fee motion because CSA filed its attorney fee motions before the remittitur issued in case No. B261285, and all proceedings in the superior court case were stayed until the issuance of that remittitur. ASAP is, once again, incorrect. Case No. B261285 involved an unspecified order or orders entered in November 2014, and the appeal was dismissed on August 13, 2015, after this court issued an order to show cause re: dismissal. The attorney fee motions that are the subject of this appeal are unrelated to the orders appealed in B261285. Rather, the motions pertain to two other appeals, B238144 and B249588.

3. ASAP’s final jurisdictional challenge is that the trial court “lacked fundamental jurisdiction due to the acceptance of public employment and office and because there was no disclosure to ASAP and ASAP was not given an opportunity to withhold its consent.” ASAP cites to Government Code section 68220, a statute that deals with supplemental judicial benefits.

¹ Code of Civil Procedure section 916, subdivision (a), provides: “Except as provided in Sections 917 to 917.9, inclusive, and in Section 116.810, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.”

ASAP has failed to make a coherent argument to support its claim that the trial court's acceptance of these benefits without the consent of ASAP deprived the trial court of jurisdiction.

B. Disqualification issues.

ASAP contends the trial court in this case should have disqualified itself in response to ASAP's challenge (Code Civ. Proc., § 170.1) filed on March 20, 2014. In its order striking the statement, the court referred to ASAP's "incomprehensible" argument concerning certain benefits received by superior court judges. The court noted that Ringgold had "repeatedly and unsuccessfully raised this issue in both the state and federal courts over an extended period of time." The trial court struck ASAP's Statement of Disqualification the same day it was filed.

The appropriate means for challenging an order concerning the disqualification of a trial judge is by way of a petition for writ of mandate filed within 10 days of the order. (Code Civ. Proc., § 170.3, subd. (d).) ASAP filed such a petition and this court denied the petition on April 7, 2014. (B255231.)

ASAP also invites this court to recuse itself from hearing this appeal because ASAP is suing a member of this court and a member of the court staff in federal court. ASAP has previously, and unsuccessfully, employed federal court litigation as a tactic to recuse this court from hearing its appeals. It is well-settled that a litigant cannot "judge shop" by filing a lawsuit against an appellate panel in an effort to obtain the panel's disqualification. "Such an obvious attempt to manipulate the legal system will not be condoned." (*First Western Development Corp. v. Superior Court* (1989) 212 Cal.App.3d 860, 867.)

C. Merits of the appeal.

This appeal concerns only a single issue: whether the trial court abused its discretion when it awarded CSA attorney fees in connection with appeal Nos. B238144 and B249588. (*Arias v. Katella Townhouse Homeowners Assn.* (2005) 127 Cal.App.4th 847, 851-852.) We find no abuse of discretion.

ASAP first contends that because this court awarded respondents “costs” in prior appeals, the trial court was limited to awarding only costs, not attorney fees. We previously resolved this issue adversely to ASAP case No. B249588, wherein we stated: “An award of costs does not preclude a party from filing a motion for attorney fees in the trial court pursuant to California Rules of Court, rule 3.1702. (See Cal. Rules of Court, rule 8.278(d)(2).) Attorney fees authorized by contract are allowable as costs pursuant to Code of Civil Procedure section 1033.5, subdivision (a)(10)(A).”

ASAP further contends that “CBS did not meet its burden to show an undisputed existence of a contractual right to attorneys’ fees based on a valid and enforceable agreement” ASAP claims, as it has in the past, that the contract on which the trial court based the attorney fees was invalid because the contract did not have an attorney fees provision. We previously resolved the issue of the validity of the contract in the consolidated appeal affirming the underlying judgment and in appeal No. B249588. We also rejected ASAP’s claim, which it raises again here, that it was prevented from using “sealed documents” to support its contention that the contract was invalid. In fact, in appeal No. B249588, we sanctioned ASAP’s counsel, Ringgold, for raising that argument because it had already been resolved in the consolidated appeal.

Finally, ASAP contends the amount of contractual attorney fees awarded by the trial court was improper because (a) CSA redacted some information (presumably privileged attorney-client material) from its billing statements submitted to the trial court, and (b) the fees awarded should have been based on some type of a fixed formula. We disagree. The attorney fees awarded by the trial court were based on the amount of time CSA's attorneys spent in responding to ASAP's appeals, including the amount of time spent responding to arguments that had long ago been resolved against ASAP. The amount of the fees were less than CSA asked for, and not an abuse of discretion.

DISPOSITION

ASAP's request for judicial notice, filed April 18, 2016, is granted. ASAP's motion to unseal documents, filed April 18, 2016, is denied. The February 11, 2015 order of the trial court is affirmed. CSA is awarded costs on appeal, including contractual attorney fees.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.,